REMARKS

The above-identified patent application has been amended and reconsideration and reexamination are requested.

This Reply is in response to an office action that was sent by the examiner as a response to Applicant's Appeal Brief.

The examiner provided the following new rejections.

The examiner rejected claims 1-16 under 35 U.S.C. 101 as being directed to non-statutory subject matter.

The examiner indicated that: ... decision logic that is not embodied on any tangible medium for processing the steps of the claimed invention" rendered the claims non-statutory, even though the claims "produce a concrete result." Applicant has amended claim 1 to recite a computing system that includes decision logic .... As amended claim 1 and claims 2-16 recite statutory subject matter.

The examiner rejected Claims 1, 5-10, 16 and 17 under 35 U.S.C. 103(a) as obvious over deMarcken et al US Patent 6,418,413 and further in view of Talluri, U.S. Patent 6,263,315.

In addition, Claim 4 was rejected under 35 U.S.C. 103(a) as obvious over deMarcken '413, further in view of Talluri, '315, and further in view of Lynch et al., U.S. Patent 6,018,715.

Also, Claims 2, 3, 18 and 19 were rejected under 35 U.S.C. 103(a) as unpatentable over deMarcken '413, further in view of Talluri '315, and further in view of Lynch et al., U.S. Patent 5,839,114.

The examine also rejected Claims 11-15 and 20 under 35 U.S.C. 103(a) as being unpatentable over deMarcken '413, further in view of Talluri '315, and further in view of Lynch et al., U.S. Patent 6,119,094.

Claims 1-20 and newly added claims 21-32 are allowable over any combination of these references taken separately or in combination with the art of record.

At the outset Applicant notes that use of the deMarcken et al US Patent 6,418,413 as reference for a rejection under 35 U.S.C. 103 is improper, since it is not a valid reference to this application. deMarcken et al US Patent 6,418,413 was filed on Feb. 4, 1999 and issued on Jul. 9, 2002. Accordingly, deMarcken et al US Patent 6,418,413 does not qualify as prior art under 35

U.S.C. 102(b). deMarcken et al US Patent 6,418,413 could only potentially qualify as prior art under 35 U.S.C. 102(e). However, both deMarcken et al US Patent 6,418,413 and the instant application were assigned or subject to an obligation of assignment to a common assignee, ITA Software, Inc. Thus, deMarcken et al US Patent 6,418,413 is also not a proper reference under 35 U.S.C. 102(e) and cannot be a valid reference under 35 U.S.C. 103(a).

Since the examiner relied upon deMarcken et al US Patent 6,418,413 as the principal reference for all of the rejections it is submitted that the rejections have been overcome.

Nonetheless, the claims are allowable over the references whether taken separately or in combination with deMarcken. Claim 1 is directed to an availability prediction system that predicts relative, competitive availability of seating on an airline flight. While deMarcken et al US Patent 6,418,413 discloses an availability prediction system, neither deMarcken et al US Patent 6,418,413 nor Talluri, U.S. Patent 6,263,315, Lynch et al., U.S. Patent 6,018,715, Lynch, U.S. Patent 5,839,114 or Lynch et al., U.S. Patent 6,119,094 address the subject matter of claim 1 that allows a user is to predict what a competitor's availability answer for an airline seat would be in response to a query for seat availability on that competitor's flight. This allows a user airline for instance to adjust an answer that it would otherwise give to a query based on what it, the user airline, for instance, determines that its competitor might do.

In particular, the references do not suggest decision logic that compares the predicted answer from the availability predictor and the potential answer from the availability system to establish a decision with respect to actual availability.

The examiner considers Talluri as teaching this feature. However, Talluri is directed to a revenue management system to accept or deny requests for resource capacity, e.g., the very actual availability system element of claim 1, not the decision logic that that compares the predicted answer from the availability predictor and the potential answer from the availability system to establish a decision with respect to actual availability.

The examiner takes the position that:

> Here, the threshold value is a function of the available capacity for the resource (seats on a flight)/time where the threshold value is compared to the expected net revenue value, and basing an indication that the request for the itinerary for a reservation will be

> accepted based on the comparison. In this case, the predicted availability is represented by determining if the revenue expected for a particular itinerary of a reservation is acceptable according to acceptable price values because in this case, since the seat availability is part of the itinerary, the seat availability depends on whether or not the expected revenue for that seat is acceptable. In addition, the actual availability is represented by the threshold value, which is an actual function of available seating capacity on a flight and time. *(pages 3-4 of the rejection).*

Applicant contends that these teachings have nothing to do with a system including decision logic that compares the predicted answer from the availability predictor (which is predicting what the competitor will answer with) and a potential answer from the availability system to establish a decision with respect to actual availability. The thresholds and values in the Talluri reference are not predicted answers from the availability predictor and potential answers from an availability system. Rather, the thresholds are merely values that are used in a lookup process to arrive at actual availability responses. Moreover, in Talluri, there is not any suggestion to incorporate any information regarding values of a competitor.

Claims 2-16, which depend directly or indirectly on claim 1, are allowable at least for the reasons discussed in claim 1. Moreover, these claims add additional distinctive features.

Claim 17 is also distinct over the references. Claim 17 recites ... receiving ... an actual availability response for a flight and comparing the predicted answer from the availability predictor and the potential answer from the availability system to establish a decision with respect to actual availability. The references do not suggest at least these features of claim 17.

The references do not suggest ... executing in the computer system an algorithm to predict the seating availability on a competitive flight. The references do not describe or suggest features of a competitive situation where one party, e.g., a user of the method would attempt to predict how a competitor might respond in order for the user to consider an adjustment, (e.g., "to establish a decision with respect to actual availability") to an actual availability response for a flight. Claims 18-20, which depend directly or indirectly on claim 17, are allowable at least for the reasons discussed in claim 17.

Newly added claims 21-32 also are distinguished over the references. Claim 21 for instance recites instructions for causing a computing device to produce an potential, actual

availability response for a flight that can satisfy the query, predict seating availability on a competitor's flight that is a competitive flight to the flight that can satisfy the query and produce a predicted answer; and compare the predicted answer and the potential availability answer ... to establish an actual answer message with respect to seat availability.... .

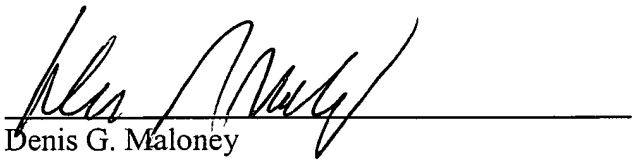
Claim 21 recites further features of the competitive scenario that are not addressed by the art, in addition to other features already argued above. Claims 22-32, which depend directly or indirectly from claim 21, add additional distinctive features.

The fact that applicant has not responded to any stated position of the Examiner should not be construed as a concession by applicant of those positions. The inclusion by applicant of arguments for patentability should not be construed as a concession by the applicants that there are not other good reasons for patentability of these claims or other claims.

Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 5/11/04



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